McNamara Declaration
Exhibit 182

From:	Mike Furlough
Sent:	Friday, September 4, 2020 6:14 PM EDT
To:	Chris Freeland
Subject:	Re: October event

Chris,

I've been thinking a lot about this, hence my long delay.

I do want to be supportive of IA because I think our interests and mission are aligned, in spite of what some have suggested in the past. I also believe it's in everyone's interest if the publishers suit went away. It poses a real danger not just to what is being defined as controlled digital lending but fair use in general, and to the degree this gets set up in court as an argument over what a "real" library is -- that's very risky for you, for us, and many others. We don't need that adjudicated in court or regulated through statute.

That said--I don't think it's a good idea for me to take part in this, but I have an idea to suggest. First let me explain my thinking.

I know that this session will need to be positioned as part of the public campaign y'all are pursuing right now, e.g., the lawsuit is a threat against all libraries to take away a fundamental right to lend. I think it is still possible that we could get yanked into a suit--yours or a new one-- if the publishers wanted to do it. I'm not as worried about this now as I was earlier in the summer, but who knows. But I've been thinking about what I would say about ETA. If I am asked to define the difference between what we have done and what you have done and are now doing, I will end up pointing out that we have put a good many more *controls* on the service than you did for NEL or for ongoing lending. Ultimately if you want to talk about different models of providing access to copyrighted works, we're going to end up talking about a risk analysis.   I may have to end up directly contrasting some things, which would implicitly suggest a criticism of your approach. And we made some very different decisions -- when we did our legal analysis it pointed us in directions that are quite different from those you have taken. And we did not feel that the methods you were employing were ones *we* could defend. We didn't think we could rely on the same legal theories that you were relying on. I'd rather keep all that to ourselves and not be quoted or paraphrased as suggesting that your actions are NOT defensible, especially at your own party.

We have our own members meeting coming up within a week of the Leaders Forum. But I wonder if, after the month of October, we could work with a third group (SPARC? CNI? Other?) to hold a session that was focused more on the policy environment that can ensure access and less on detailing variations on digital lending.   That may be less interesting to you, but that policy environment could/should include more clearly delineated copyright exceptions for libraries to provide digital access to copyrighted works. I don't have his super well thought out, but let me know what you think about this.

Sorry to be cagey, and also to leave this to a written email on the eve of a week I'll be "out of the office."   But I will be glad to talk in a week or so if you wish.

mike

On Thu, Aug 20, 2020 at 10:57 AM Chris Freeland <███████████@archive.org> wrote:
Mike - I watched the HathiTrust webinar last week (2 weeks ago? time has no meaning, as I've taken to saying, "every day is Tuesday "). Great job and great engagement during & after the session. We included it in our weekly digital library newsletter and it was the top story that users clicked on, even over our lead story with banner image. It's amazing how effective webinars & virtual events have become in our new distributed library environment...

...which brings me to the topic at hand. We host our annual Library Leaders Forum in October, which has traditionally been an in-person event in San Francisco, scheduled alongside our annual Internet Archive celebration and evening party. That, of course, is all cancelled this year. Instead, we're planning a 3 week virtual event with interactive sessions on October 6, 13 & 20. Our working title for the event is "Digital Lending in a Pandemic" and each session will be focused on a theme of Policy, Community, Impact. For the Community session, tentatively planned for 10am-12pm PDT Oct 13, we are wanting to have a panel conversation with the digital libraries and implementors that are mobilizing new services - your ETAS, Project ReShare's CDLI community, and our own Open Libraries.

I understand from our previous conversations that you have a fully justified and understandable reason for being deliberate in what conversations you join. I would love to find a way to craft a session description & scope that would make Hathi feel comfortable in participating. Is that even in the realm of possibility? Happy to chat in person, wanted to write it out and pass to you for asynchronous consideration.

Hope you are well,

Chris


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